

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
J. L. KUMMERFELDT,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 1072

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of respondent's Order DE 76-170 requiring removal of a certain landfill, came before the Pollution Control Hearings Board, Art Brown, Chairman, and Chris Smith, at a formal hearing on December 16, 1976 in Seattle.

Appellant Kummerfeldt (hereinafter "appellant") appeared pro se; respondent Department of Ecology (hereinafter "respondent") appeared by and through Robert E. Mack, Assistant Attorney General. Olympia court reporter Sherri Darkow recorded the proceedings.

Respondent's Motion to Dismiss for failing to timely file is

1 denied on the grounds that through its correspondence and conversation,
2 it confused the appellant herein to his detriment as to his appeal
3 rights to this Board, and is thereby estopped to raise the jurisdictional
4 issue.

5 Having heard the testimony and having examined the exhibits, the
6 Pollution Control Hearings Board makes these

7 FINDINGS OF FACT

8 I

9 Appellant Jerry L. Kummerfeldt is the owner of certain property
10 located in Bothell, Washington. In early 1974 he began filling a
11 "worthless" ravine, most of which was on his property, because he
12 determined the ravine to be a serious hazard to children in the area.

13 II

14 Appellant secured the wallboard (sheetrock) material used for the
15 fill from various persons and companies. Material was hauled to the site
16 and dumped there with appellant's permission.

17 III

18 Because of a citizen's complaint, the respondent investigated
19 appellant's activities on May 16, 1975. At the site, respondent's
20 inspector found several hundred cubic yards of wallboard material used
21 as landfill deposited in the ravine. Water was seen flowing in and
22 through the materials. The inspector saw one rat and some putrescible
23 material, and smelled hydrogen sulfide gas.

24 IV

25 The inspector contacted the Snohomish County Health District, to
26 whom respondent has delegated responsibility for the management and

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1 control of solid waste disposal sites in an area which includes appellant's
2 property. On May 19, 1975 the sanitarian from the District visited the
3 site and saw the 100x30x10 foot deep landfill comprised of wallboard
4 through which water was flowing. A stop work order was posted on the
5 site on May 21, 1975 by the health authorities.

6 V

7 On June 1, 1975 appellant made application to Snohomish County
8 for a conditional use permit to construct a landfill and paid the \$75.00
9 fee required. Appellant continued to fill the ravine. Upon notice from
10 the County to stop filling until a permit was received, appellant notified
11 the dumpers to stop hauling wallboard material. After June 12, 1975,
12 appellant continued to dump, but personally dumped only materials other
13 than wallboard at the site. The County, after having prepared and
14 considered an Environmental Impact Statement, denied appellant's
15 application for a conditional use permit on October 7, 1976.

16 VI

17 On August 28, 1975 appellant and representatives from the Health
18 District and the Department of Ecology met to try to help appellant
19 formulate a plan to correct the observed water quality degradation.
20 Appellant did not submit any plans as a result of the meeting. Appellant
21 did, however, continue to fill the ravine.

22 On September 3, 1975, an officer of the health district requested
23 in writing that appellant follow four steps to correct his violation,
24 with a September 15, 1975 compliance date. Only one of these steps was
25 met, in part, by September 17, 1975.

26

27 FINAL FINDINGS OF FACT,
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VII

On April 12, 1976 respondent issued a notice of violation and required a full report from appellant stating what steps were being taken to abate the water pollution. Appellant did not file the report as required by the respondent, but did continue to fill the ravine with dirt and rocks.

On August 4, 1976 respondent issued an Order requiring the removal of all the deposited material from the site. Appellant continued to dump fill after the Order. It is this Order which is the subject matter of this appeal.

VIII

Appellant has not received any permit for his dumping and filling activities from any government agency. He conducted these activities with full awareness of county and state laws regulating such activities.

IX

As of the date of this hearing, appellant has nearly covered the visible wallboard materials with one to two feet of soil. Since May, 1975, the size of the fill has nearly doubled. Approximately one-half of the existing 3,000 cubic yards of fill is made up of sheetrock.

Appellant feels that 95 percent of his project is completed and that he could finish it within 60 days. With a preliminary plan which he disclosed at the hearing, he believes that surface water can be diverted away from his fill, thereby removing water contact with the landfill. He has diverted some of the surface water away from the site at this time. He is willing to take the risk that if his plan does not work, he will have to remove the entire landfill. There is a possibility tha

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1 the water pollution and odor problems can be controlled without requiring
2 removal of the fill. However, appellant has not submitted any such plan
3 to respondent. Appellant's present diversion is of surface water only.
4 Such diversion does not offer water quality protection for springs
5 believed to surface near the toe of the slope, or for rain water falling
6 on and percolating through the earthen fill to the sheetrock material.

7 X

8 Surface water enters appellant's property on the west and
9 accumulates in a pond. The water then percolates through the soil into
10 the ravine where contact is made with the wallboard. (Prior to the
11 fill, the ravine was a natural water course with flowing water). The
12 water surfaces at the toe of the fill, located near the southern
13 boundary of the property, enters an unnamed tributary to North Creek,
14 and flows into North Creek and thence to Lake Washington. The water
15 leaving the toe of the fill is visibly polluted with a whitish material
16 and is gray in color. Water quality tests made on August 12, 1975 and
17 January 12, 1976 showed that the water is polluted and that each water
18 pollution is caused by the materials in the landfill. Such water
19 pollution is detrimental to the state's fisheries resource. Left
20 alone, the water pollution will continue indefinitely.

21 XI

22 The removal of the entire landfill is the only certain long-term
23 solution to water pollution and odor problems. If the fill is not
24 removed, it will present a continuing threat to ground water wells in
25 the area. Completion of the fill and beautification of the fill
26 cover will not remove the threat of these continuing pollution and odor

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1 problems. Removal of the fill may cause a short-term negative
2 environmental impact, through disruption of the creek and/or a need to
3 trench around the site, but will bring about a long-term improvement.

4 XII

5 Any Conclusion of Law which should be deemed a Finding of Fact
6 is hereby adopted as such.

7 From these Findings the Pollution Control Hearings Board comes to
8 these

9 CONCLUSIONS OF LAW

10 I

11 The Board has jurisdiction over the persons and the subject matter
12 of this proceeding.

13 II

14 Respondent Department of Ecology has the burden of proof in this
15 proceeding.

16 III

17 Appellant violated RCW 90.48.080 by causing the pollution of water
18 in an unnamed stream, tributary to North Creek and Lake Washington,
19 which are waters of the state.

20 IV

21 Appellant was properly notified of the respondent Department's
22 determination that a violation of chapter 90.48 RCW had occurred.
23 Appellant did not respond within thirty days as required by RCW 90.48.120.

24 V

25 Respondent's Order directing the removal of the deposited material
26 is reasonable and appropriate under the circumstances, and should be

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1 affirmed.

2 VI

3 Any Finding of Fact which should be deemed a Conclusion of Law
4 is hereby adopted as such.

5 From these Conclusions the Pollution Control Hearings Board
6 makes and enters this

7 ORDER

8 Respondent Department of Ecology Order DE 76-170 is affirmed.
9 However, such affirmation is not intended to affect the Department's
10 discretion in seeking other solutions short of removal.

11 DATED this 4th day of January, 1977.

12 POLLUTION CONTROL HEARINGS BOARD

3
14 Art Brown
ART BROWN, Chairman

15
16 Chris Smith
17 CHRIS SMITH, Member

18
19 (Did not participate)
W. A. GISSBERG, Member

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